



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1998

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR98-3146

Dear Mr. Toscano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120538.

The City of Dallas (the "city") received a request for a copy of a memorandum sent from the city attorney's office concerning the city's sexually-oriented business ordinance. You assert that the memorandum at issue is protected from disclosure under sections 552.103(a) and 552.107(1) of the Government Code.

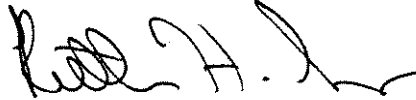
A governmental body must meet a multi-pronged test to show that particular records are subject to the section 552.103(a) exception. First, the governmental body must show that litigation is reasonably anticipated or that it is pending. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Second, the governmental body must establish how and why the exception is applicable to particular records, by showing the relationship of the subject of the underlying litigation to the records at issue. Open Records Decision No. 638 (1996). In this situation, you have shown that there is ongoing litigation and our review of the memorandum shows that it is related to that litigation.

Thus, you may withhold the memorandum for which you assert the section 552.103(a) exception. In making this determination, we assume that the opposing party in the litigation has not already seen the report. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that

information.¹ Open Records Decision Nos. 349 (1982), 320 (1982). Also, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 120538

Enclosures: Submitted documents

cc: Mr. Robert Ingrassia
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)

¹Because the information may be withheld under section 552.103(a), we need not address your section 552.107(1) argument at this time. We note that section 552.107(1), like section 552.103(a), would be inapplicable if the opposing party had been given access to the memorandum.